

1 Mary Shea Hagebols (SBN 113222)
2 SHEA LAW OFFICES
3 1814 Franklin Street, Suite 800
4 Oakland, CA 94612
5 Tel: 510-208-4422
6 Fax: 415-520-9407
7 mary@shealaw.com

8 Attorneys for Plaintiff Kathryn Mary McGrath

FILED

MAY - 6 2013

SUPERIOR COURT OF CALIFORNIA
COUNTY OF FRESNO

BY _____ DEPUTY

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FRESNO COUNTY
12 CIVIL - UNLIMITED

13 KATHRYN MARY MCGRATH;

14 Plaintiff,

15 v.

16 VINCENT A. O'CONNELL, and individual,
17 and DOES 1-25;

18 Defendants.

CASE NO.: 13CE01413

COMPLAINT FOR DAMAGES

1. SEXUAL BATTERY
2. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
3. NEGLIGENCE

REQUEST FOR JURY TRIAL

AMOUNT IN CONTROVERSY EXCEEDS
MINIMUM JURISDICTIONAL AMOUNT

BY FAX

22 Plaintiff Kathryn Mary McGrath complains against Defendants Vincent A. O'Connell and
23 Does 1 to 25 as follows.

24 NATURE OF THE ACTION

25 1. Plaintiff Kathryn Mary McGrath brings this lawsuit because, when she was
26 barely 16 years old, she was sexually assaulted (digitally raped) by a visiting priest from Ireland and a
27 family friend, Defendant Vincent A. O'Connell commencing in July 1970. The initial incident

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1 occurred in Plaintiff's family home in Fresno, California shortly after the sudden and expected
2 death of her beloved father, James. Plaintiff is informed and believes that, at the time, Defendant
3 Vincent A. O'Connell was a member of the Spiritan Order (also known as the "Holy Ghost
4 Fathers"). At the time of the incident(s), Defendant Vincent A. O'Connell was assigned to St.
5 Anthony of Padua Church in Fresno, California

6 2. Plaintiff also contends that Defendants 1-25 (whose precise names are not
7 known to Plaintiff), were other persons within the Catholic Church at St. Anthony's of Padua in
8 Fresno, California, Ireland and other places in the United States who knew or should have known
9 that Vincent A. O'Connell may sexually assault minor age children such as Plaintiff Kathryn Mary
10 McGrath yet they did nothing to prevent this from happening to Plaintiff or to protect her.

11 3. Plaintiff is informed and believes and otherwise contends that all the
12 Defendants (including those whose precise names are not known to Plaintiff) in some manner or
13 another conspired to facilitate, ratify or authorize Defendant Vincent A. O'Connell's unlawful
14 conduct as alleged herein or otherwise engaged in their own unlawful acts toward Plaintiff.

15 4. As a direct consequence of these unlawful acts, Plaintiff has suffered severe
16 emotional distress including post-traumatic stress disorder, as well as economic, consequential, and
17 other damages, all to her detriment. Defendants' actions forced Plaintiff to hire attorneys and file
18 suit and she, therefore, has incurred substantial attorneys' fees and costs.

19 PARTIES

20 5. Plaintiff Kathryn Mary McGrath. (hereinafter, "Kathryn" or "Plaintiff")
21 was, at the time of the incident a resident of Fresno County California. She currently resides in
22 Marin County, California.

23 6. Plaintiff is informed and believes that some time in 1970/1971, Defendant
24 Vincent A. O'Connell left California and never returned to the state and that he currently resides in
25 Dublin, Ireland.

26 7. Plaintiff is informed and believes that prior to Defendant Vincent A.
27 O'Connell's initial sexual assault in 1970, Defendant Vincent A. O'Connell was working in Nigeria,
28 Africa. Plaintiff is informed and believes that after leaving California, Defendant Vincent A.
O'Connell spent time in Zambia, Africa and later at St. Vincent Ferrar Church in Brooklyn, New
York.

8. Plaintiff is informed and believes that the true names and capacities,

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1 whether individual, corporate, associate or otherwise, of Defendants Does 1 through 25, are
2 unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff will
3 amend this Complaint by inserting the true names and capacities of each such Defendants, with
4 appropriate charging allegations, when they are ascertained. Plaintiff is informed and believes and
5 thereon alleges that each of the Defendants designated herein as a "Doe" is responsible in some
6 manner for the injuries suffered by Plaintiff and for damages proximately caused by the conduct of
each such Defendant as herein alleged.

7 9. Plaintiff is informed and believes and thereon alleges that at all times
8 material to this Complaint, Defendant and each of the defendants fictitiously named in this
9 Complaint, in addition to acting for himself, herself or itself, and on his, her or its own behalf
10 individually, is and was acting as the agent, servant, employee and representative of, and with the
11 knowledge, consent and permission of, and in conspiracy with each and all of the defendants and
12 within the course, scope and authority of that agency, service, employment, representation and
13 conspiracy. Plaintiff further alleges on information and belief that the acts of each of the
14 defendants were fully ratified by each and all of the defendants. Specifically, and without limitation,
15 Plaintiff alleges on information and belief that the actions, failures to act, breaches, conspiracy and
16 misrepresentations alleged herein and attributed to one or more of the specific defendants were
approved, ratified and done with the cooperation and knowledge of each and all of the defendants.

17 10. The allegations of this Complaint stated on information and belief are likely
18 to have evidentiary support after a reasonable opportunity for further investigation and discovery.

19 VENUE

20 11. Venue is proper because the injuries to Plaintiff occurred in Fresno County,
21 California.

22 CONTINUING VIOLATIONS

23 12. The wrongful acts and omissions giving rise to the Defendants' liability in
24 this action commenced in or about July 1970 and have been and are "continuing" in nature as of
25 the date of filing this Complaint. Plaintiff reserves the right to amend this Complaint as new and
26 additional facts and claims arise or become known to Plaintiff.

27 12. Plaintiff was incapacitated for period at a time due to severe depression and
28 physical illness, and as a result was incapable of transacting business or understanding the nature

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1 and effect of her actions, and as a result is entitled to equitable tolling of her claim as well at tolling
2 under California Code of Civil Procedure section 352.

3 **TOLLING DUE TO DURESS AND DISABILITY**

4 13. Further, Defendants placed Plaintiff under emotional duress in an attempt
5 to prevent her from filing suit or otherwise complaining of their unlawful acts.

6 14. Further, threats and undue influence are both grounds for tolling based on
7 estoppel. "It is well settled that where delay in commencing an action is induced by the conduct of
8 the defendant, he cannot avail himself of the defense of the statute [of limitations]. [Citations.]"
9 (*Gaglione v. Coolidge* (1955) 134 Cal.App.2d 518, 527, 286 P.2d 568; see also *Rupley v. Huntsman* (1958)
10 159 Cal.App.2d 307, 313, 324 P.2d 19; *Langdon v. Langdon* (1941) 47 Cal.App.2d 28, 32, 117 P.2d
11 371; *Industrial Indem. Co. v. Ind. Acc. Com.* (1953) 115 Cal.App.2d 684, 689, 252 P.2d 649; *Carruth v.*
12 *Fritch* (1950) 36 Cal.2d 426, 434, 224 P.2d 702.)

13 **TOLLING DUE TO DEFENDANT UNAVAILABILITY**

14 15. On information and belief, Defendant Vincent A. O'Connell left the State
15 of California in about 1970/1971. Under California law, the statute of limitations does not run
16 while a resident Defendant is out of state. (Code Civ. Proc., § 351.)

17 **FACTUAL DISCUSSION**

18 14. Plaintiff Kathryn Mary McGrath was born on January 23, 1954 in Fresno,
19 California. She was the oldest of four children in a traditional Irish Catholic household.

20 15. Kathryn was baptized and confirmed in the Catholic Church.

21 16. The Catholic Church is the world's largest Christian church with 1.2 billion
22 members worldwide.

23 17. The Catholic Church teaches that it is the one true Church divinely founded
24 by Jesus Christ, that its bishops are the successor of Christ apostolate and that the Pope is the sole
25 success to who has apostolate primacy

26 18. The Catholic hierarchy is lead by the Pope and includes cardinals, patriarchs
27 and diocese bishops.

28 19. The Church maintains that the doctrine on faith and morals that it presents
as definitive is infallible.

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1 20. The Catholic Church is Trinitarian and defines its mission as spreading the
2 Gospel of Jesus Christ, administering the sacraments and exercising charity.

3 21. Catholics are taught that Christ works through priests and that they have the
4 power to give sacraments and absolve sins. Kathryn Mary McGrath's world centered around the
5 Catholic Church. She attended mass regularly. She prayed daily with her family at meal time. She
6 prayed the Rosary, went to confession, and was educated by Catholic nuns and priests.

7 22. Kathryn was taught that priests were to be revered and trusted as they were
8 directly connected to Jesus Christ. Kathryn was taught that she must be wholly obedient to priests.

9 23. In around 1970, a very striking and charismatic Irish priest, Defendant
10 Vincent A. O'Connell entered the lives of the McGrath family. He was "visiting" Kathryn's parish
11 St. Anthony of Padua in Fresno. Plaintiff is informed and believes he was about 36 year old at the
12 time, about 6 feet 5 inches tall with dark hair. Defendant Vincent A. O'Connell had a strong Irish
13 brogue and was very charismatic. Plaintiff is further informed and believes that Defendant
14 Vincent A. O'Connell had been working as a priest in Nigeria and was in between assignments when
15 he was a visiting priest in Fresno.

16 24. Defendant Vincent A. O'Connell was a regular fixture in the McGrath
17 household. He was often found frolicking with the McGrath children in the family pool on hot
18 summer days; tossing them around from one end of the pool to the other. Defendant Vincent A.
19 O'Connell drove a Volkswagen Bug that the kids loved. Kathryn came to know Defendant Vincent
20 A. O'Connell as a trusted priest and friend of the family. Defendant Vincent A. O'Connell
21 manipulated that trust to gain access to Plaintiff in order to sexually molest her.

22 25. Defendant Vincent A. O'Connell was a good friend of Plaintiff's father
23 James and Defendant. Defendant Vincent A. O'Connell was known to golf with Kathryn's father
24 James McGrath frequently and to socialize with James McGrath at the bar after golfing ("the 19th
25 Hole"). Kathryn was extremely close to her father and had fond memories of one on one time with
26 him on the golf course.

27 26. On about July 6, 1970, Kathryn's father became seriously ill and was taken to
28 the hospital. When Kathryn came home that day, to discover everyone was gone and her father was
in the hospital, she did not know what to do. The only thing she could think of was to reach out to
her father's dear friend, and the trusted family priest, Defendant Vincent A. O'Connell

27 27. So, Kathryn ran down to the parish rectory and knocked on the front door.

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1 28. Monsignor Flood answered the door and appeared surprise to see Kathryn.
2 She was visibly upset and explained why she had come and was very upset. There were other priests
3 in the rectory and they were eating dinner. Defendant Vincent A. O'Connell asked Kathryn to sit at
4 the table and gave her a glass of wine. Kathryn remembers they were all wearing their "last rites"
5 vestments and that was upsetting to her.

6 29. Kathryn and Defendant Vincent A. O'Connell got into his Volkswagen Bug
7 and proceeded to the hospital. On the way, they stopped at a convenience store. Defendant Vincent
8 A. O'Connell gave Kathryn money and told her to go buy cigarettes for him. Defendant Vincent A.
9 O'Connell told Kathryn to buy a pack of cigarettes for herself as she might want to smoke. Up until
10 that point, Kathryn had never smoked a cigarette in her life. When she got back the car Defendant
11 Vincent A. O'Connell lit cigarettes for himself and Kathryn. When she attempted to smoke she got
very dizzy and nauseous.

12 30. Defendant Vincent A. O'Connell then drove Kathryn to see her father in
13 the hospital. It was a very difficult experience. Kathryn's Mother did not want her to see what was
14 happening.

15 31. On July 8, 1970, Kathryn's father died. It was a great shock and tragedy for
16 the family. James McGrath was only 43 years old. The entire family was devastated. Defendant
17 Vincent A. O'Connell performed the funeral mass. Sadly, Kathryn's mother began to drink heavily
18 after her father's passing, so Kathryn fell into the role of mothering and caring for her younger
brothers and sisters.

19 32. After the funeral, Defendant Vincent A. O'Connell continued to hang
20 around the McGrath house.

21 33. On one occasion when Defendant Vincent A. O'Connell and Kathryn
22 happened to be alone in the kitchen. Kathryn was still in deep emotional grief about her father.
23 Suddenly, Defendant Vincent A. O'Connell pushed her up against the kitchen cabinet, started
24 kissing her, put his hand down her pants and digitally raped her. Kathryn was able to break away and
25 ran and hid in a closet. Kathryn has a vague memory of a subsequent incident where Defendant
26 Vincent A. O'Connell was on top of her. At this time, she has virtually no memory of the details of
that evening or anything else for the remainder of 1970.

27 34. Kathryn was sickened when her Mother gave her father's precious golf club
28 to Defendant Vincent A. O'Connell as a gift.

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1 35. Kathryn told no one of the sexual assaults for many years.

2 36. Kathryn was undone by Defendant Vincent A. O'Connell's actions and she
3 changed dramatically. Kathryn suffered greatly and for many years she thought she was the only
4 persons on Earth that this ever happened to. When Kathryn became pregnant in 1971/1972, her
5 Mother and the St Anthony of Padua Parish secretly facilitated the private adoption of her baby boy
6 which was heartbreaking to Kathryn.

7 37. Kathryn did not realize the harm that Defendant Vincent A. O'Connell's
8 actions had caused her until 2009/2010 when she was diagnosed with post traumatic stress disorder.

9 38. In 2002/2003 Plaintiff reported the priest sexual abuse of Defendant Vincent
10 A. O'Connell to her St Anselms' Parish Deacon, Cunningham, the parish priest Fr. Neil Healy, and
11 Kathryn's supervisor and principal, Odile Steel, after reading a story in Time Magazine about priest
12 abuse in Boston. At the time, she was working as an art teacher for St. Anslems Catholic school.
13 (No one asked Kathryn about the priest's name or the details of the incident.) Kathryn assumed that
14 her parish would report it to the Archdiocese of San Francisco. No one asked what the details were;
15 they were only concerned about keeping the matter quiet and Defendant Vincent A. O'Connell's
16 actions questioned whether she planned to sue (in a tone and manner that clearly communicated to
17 her that she was not to sue).

18 39. Plaintiff was never given notice of the applicable statute of limitations nor
19 was she informed that she had any rights relative to the sexual abuse by Fr. Vincent O'Connell.
20 Plaintiff filed a separate complaint against the Archdiocese of San Francisco, St. Anselms, and the
21 school principal, Odile Steel, for the injuries she has suffered; including injuries she has suffered as a
22 result of the way she was treated after she reported the priest abuse to them in 2002/2003. That case
23 is *Jane Doe v Archdiocese of San Francisco et al*, San Francisco Superior Court, Case Number
24 GCC 12-520929.

25 40. In about 2005/2006, the Survivors Network of those Abused by Priests
26 ("SNAP") protested outside St. Anselm's School in Marin County regarding the presence of the
27 priest Fr. John Schwartz who was at St. Anselm's. Fr. Schwartz was allegedly named in a civil suit in
28 Oregon as the abuser of a student at a Jesuit school in Beaverton, Ore. in 1986 and 1987. When the
protests occurred, Odile Steel went to Kathryn and said that Fr. Healy wanted her to see if Kathryn
was ok; if she was being affected by the protests. Then, in the same breath, Odile Steel informed
Kathryn that Fr. Healey and the parish were fully supporting Fr. Schwartz. This devastated Kathryn.

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1 Once again, the Church did not care about what had happened to her. Kathryn McGrath contends,
2 in her other lawsuit, that after she reported the priest abuse to the Parish priest and her Principal
3 Odile Steel and St Anslems in San Rafael, California, she was subjected to a campaign of harassment,
4 defamation and discrimination that culminated in her developing severe depression, cyclic vomiting
5 syndrome and a stress related heart attack in May 2010.

6 **FIRST CAUSE OF ACTION**

7 **SEXUAL BATTERY**

8 **Against all Defendants**

9 1. Plaintiff Kathryn Mary McGrath incorporates by reference as though fully
10 set forth herein, each and every allegation set forth above in this Complaint. As a first separate and
11 distinct claim for relief, Plaintiff Kathryn Mary McGrath complains against all Defendants as
12 follows:

13 2. Defendant Vincent A. O'Connell committed a sexual battery on Plaintiff
14 Kathryn Mary McGrath by acting with the intent to cause a harmful or offensive contact with an
15 intimate part of Plaintiff Kathryn Mary McGrath and engaging in sexually offensive contact with
16 Plaintiff Kathryn Mary McGrath.

17 3. Plaintiff was a minor age child at the time of the sexual assault.

18 4. Defendant Vincent A. O'Connell's actions were intended to cause an
19 imminent apprehension of a sexually offensive contact with Plaintiff.

20 5. Defendant Vincent A. O'Connell committed sexual battery upon another is
21 liable to that person for damages, including, but not limited to, general damages, special damages,
22 and punitive damages.

23 6. Plaintiff Kathryn Mary McGrath is informed and believe and otherwise
24 alleges that Defendants DOES 1-25 are strictly liable for Defendants' actions under the principles
25 of *respondeat superior*, as alleged herein and otherwise had advance knowledge that Defendant would
26 engage in this despicable conduct and by their actions and inactions ratified, authorized and
27 condoned this unlawful behavior.

28 7. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff
Kathryn Mary McGrath has suffered severe emotional distress, humiliation, embarrassment, mental
and emotional distress and anxiety, all in an amount according to proof at trial.

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1 8. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff
2 Kathryn Mary McGrath has suffered economic harm and other consequential damages all in an
3 amount according to proof at trial.

4 9. The acts of Defendants, as alleged herein were willful, wanton, and
5 malicious and were intended to oppress and cause injury to Plaintiff. In light of the willful, wanton,
6 malicious and intentional conduct engaged in by Defendants, Plaintiff Kathryn Mary McGrath is
7 entitled to an award of punitive damages.

8 10. Plaintiff Kathryn Mary McGrath also seeks declaratory and injunctive relief
9 as set forth below.

10 WHEREFORE, Plaintiff Kathryn Mary McGrath prays for judgment against Defendants as
11 set forth below.

12 **SECOND CAUSE OF ACTION**

13 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

14 **(Against All Defendants)**

15 11. Plaintiff incorporates by reference as though fully set forth herein, each and
16 every allegation set forth above in this Complaint. As a separate and distinct claim for relief,
17 Plaintiff complains against Defendants:

18 12. This is an action for damages pursuant to the common law of the State of
19 California as mandated by the California Supreme Court in the decision of *Rojo v. Kliger* (1990) 52
20 Cal. 3d 65.

21 13. Defendants engaged in the extreme and outrageous conduct herein above
22 alleged with wanton and reckless disregard of the probability of causing Plaintiff to suffer severe
23 emotional distress.

24 14. As a proximate result of the extreme and outrageous conduct engaged in by
25 Defendants, Plaintiff suffered humiliation, mental anguish and extreme emotional and physical
26 distress all to her general damage in an amount according to proof at trial.

27 15. Defendants' conduct has caused and continues to cause Plaintiff substantial
28 losses in earnings, significant reputation and professional injury, medical expenses, future earnings
and benefits, costs of suit, embarrassment and anguish, all to her damage in an amount according
to proof.

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1 16. Defendants' conduct as herein alleged was malicious and oppressive in that
2 it was conduct carried on by Defendants in a willful and conscious disregard of Plaintiff's rights and
3 subjected her to cruel and unjust hardship. Plaintiff is therefore entitled to an award of punitive
4 damages against Defendants.

5 WHEREFORE, Plaintiff prays for relief as set forth herein.

6 **THIRD CAUSE OF ACTION**

7 **NEGLIGENCE**

8 **(Against All Defendants)**

9 17. Plaintiff, individually, incorporates by reference as though fully set forth
10 herein, each and every allegation set forth above in this Complaint. As a separate and distinct cause
11 of action, Plaintiff complains against Defendants as follows:

12 18. Defendants owed Plaintiff a duty of care not to cause her physical harm or
13 emotional distress.

14 19. Defendants breached this duty of care by way of their own conduct as
15 alleged herein.

16 20. Defendants' conduct from 1970 and continuing in the present has caused
17 Plaintiff emotional distress.

18 21. As a proximate result of Defendants' extreme and outrageous acts, Plaintiff
19 has suffered emotional distress, humiliation and embarrassment.

20 22. Defendants' conduct has caused and continues to cause Plaintiff substantial
21 losses in earnings, significant reputation and professional injury, medical expenses, future earnings
22 and benefits, costs of suit, embarrassment and anguish, all to her damage in an amount according
23 to proof.

24 WHEREFORE, Plaintiff prays for relief as set forth herein.

25 **PRAYER FOR RELIEF**

26 Wherefore Plaintiff Kathryn Mary McGrath prays for judgment against Defendants, and
27 each of them, as follows:

- 28 1. For a money judgment representing compensatory damages including damages,
consequential damages, lost wages, earnings, and all other sums of money, together
with interest on these amounts, according to proof;

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2. For an award of money judgment for mental pain and anguish and severe emotional distress and psychological harm, according to proof;
3. Punitive damages, according to proof;
4. For attorney's fees and costs;
5. For prejudgment and post-judgment interest;
6. For declaratory and injunctive relief; and
7. For any other relief that is just and proper.

Dated: May 6, 2013

SHEA LAW OFFICES

By Mary Shea Hagebols

Mary Shea Hagebols

Attorney for Plaintiff Kathryn Mary McGrath

JURY TRIAL DEMANDED

Plaintiff Kathryn Mary McGrath demands trial of all issues by jury.

Dated: May 6, 2013

SHEA LAW OFFICES

By: Mary Shea Hagebols,

Mary Shea Hagebols

Attorney for Plaintiff Kathryn Mary McGrath